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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

April 15, 1998

Daniel Phythyon
Chief, Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 8010
Washington, DC 20554

Re: PR Docket No. 92-235
Ex Parte Communication

Dear Mr. Phythyon:

This letter is written to you on behalf of Hewlett-Packard Company ("HP") and SpaceLabs Medical, Inc. ("SpaceLabs") in response to the letter submitted to D'Wana Terry, Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, by the Industrial Telecommunications Association ("ITA") on February 19, 1998. As noted further below, we are writing at a time when interference to medical telemetry from other RF transmissions has raised great concern among the public, hospitals and the Food and Drug Administration. These developments underscore the need to proceed very carefully in this proceeding not to undermine this vital, lifesaving medical service in an effort to add new land mobile channels for other commercial and industrial functions.

The "observations" set forth in ITA's latest letter do nothing more than restate the fallacious arguments that it and allied groups have already submitted in this proceeding to which HP and SpaceLabs have already responded. HP and SpaceLabs will not burden the record by restating these responses in detail,[1] but will briefly respond to these "observations" as follows:

[1] See, in particular, letters to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, dated May 19, 1997, January 12, 1998, and June 24, 1997, and "Petition for Reconsideration and Clarification" (by HP), "Comments" (by SpaceLabs), and a "Reply" (by HP), filed on May 19, 1997, June 16, 1997, and July 2, 1997, respectively, in this proceeding.

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ITA Observation 1: LMCC's plan would not require incumbents to "shut down," "only" to relocate.

Response: False.

Whether or not the tens of thousands of existing medical telemetry systems would be required by FCC regulation to shut down, allowing co-channel high powered operations on the same frequency will subject them to interference that makes them unusable, which to a hospital or a cardiac patient is the same thing.

As HP and SpaceLabs have pointed out on numerous occasions, LMCC's plan does not (and, by LMCC's own admission,[2] does not even purport to) provide adequate usable frequency even for existing medical telemetry operations in the band. Putting aside the costs of relocation (which ITA apparently finds irrelevant for hospitals, but not when its own constituents might be affected), there is no place offered for hospitals to relocate their systems and be protected from interference.

ITA Observation 2: Relocation of medical telemetry is mandated by the Commission's decision on refarming to implement spectrally efficient technologies.

Response: False.

The Commission's refarming decision does not mandate the relocation of low power medical telemetry and, to the extent that relocation may be considered an option, the Commission also directed the parties to consider creating a low-power zone in the band that would more efficiently use available spectrum and that would, by its nature, require some relocation of high-power and low-power systems. But LMCC (and its members, such as ITA), while conceding this would be more efficient, rejected this approach as too expensive for their constituents.[3]

Forcing such systems out of the band cannot be justified in the name of spectrum efficiency. Because of its high data rate and capabilities for frequency reuse at close distances, low power medical telemetry has been and will remain (if permitted to operate) one of the most efficient uses of the band.

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[2] LMCC's letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau dated June 4, 1997 (the "Consensus Plan"), at 7.

[3] Id. at 4.

ITA Observation 3: Medical telemetry would operate under essentially the same environment under LMCC's plan as it did previously.

Response: False.

Under the former rules (still effectively in place by virtue of the freeze), there were approximately 267 offset channels in the Business Radio Service, each limited to no more than 2 watts (not 3 watts as stated by ITA), with some channels limited solely to medical telemetry use.[4] While sharing has resulted in some channels being unusable at particular locations, through careful monitoring and selection of frequencies, enough effectively interference free channels have existed for medical telemetry use, with some hospitals employing over 200 450-470 MHz offset channels at the same time.

LMCC's plan would reduce the available pool of low power channels to 80,[5] and consolidate use from other business and non-business radio services on these few channels. For anyone seriously to suggest that more than a very few of these channels would remain usable for medical telemetry, much less sufficient to replace the hundreds of channels available and in use today is doing little more than whistling in the dark. Certainly, neither LMCC nor ITA offer any analysis that, under the LMCC plan, such channels would continue to be effectively available for medical telemetry purposes.

ITA Observation 4: Medical telemetry will now be "protected" as "primary."

Response: Meaningless under current systems of coordination.

LMCC's plan offers no effective protection for very low power medical telemetry operations. Both current and past experience with the frequency coordination processes, including the period prior to October, 1992 when medical telemetry was subject to coordination, show that such very low power operations are essentially ignored.

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[4] See former Section 90.238(e), 47 C.F.R. § 90.238(e) (1994).

[5] This comprises the 40 channel pairs that, under LMCC's plan, would be limited to 2 watts and specified for "non-voice coordinated" (10 channel pairs), "central alarm systems," (5 channel pairs) and "non-coordinated itinerant" (25 channel pairs) uses.

The 100 channels on which there may be permitted twenty (20) watt base stations operating from up to 75 feet, and 5 watt mobile (or higher powers outside of designated urban areas) would effectively wipe out medical telemetry operations over such large distances as to be presumptively useless for such purpose. Thus, a single base station operating at maximum power and height would be expected to interfere with more than ten times the area that would suffer interference from a two (2) watt mobile.

ITA Observation 5: Medical telemetry can't be accommodated in the 450-470 MHz band.

Response: False.

ITA's protestations to the contrary, medical telemetry has operated very effectively and efficiently in the 450-470 MHz band and, more particularly, on the former business radio offsets that have been reserved for low power. In a refarming proceeding designed to increase available use in the band, where all other services are being able to expand their operations, it would only be the case that there is no room even for existing medical telemetry operations if one accepts ITA's (and LMCC's) premises and priorities, to wit: (1) other (non-medical telemetry) uses of the band must be expanded; (2) no high power uses of the band (unlike medical telemetry) should have to change frequencies to make more efficient use of the band; and (3) medical telemetry has no right to operate in the band anyway, so if not all "expectations" can be met, its operations should go somewhere else.

ITA Observation 6: New spectrum is available for medical telemetry, but not for other users of the band.

Response: Misleading as to the availability of other frequencies for medical telemetry; false as to frequencies available for the business and industrial land mobile communications requirements.

The frequency recently opened up to medical telemetry in the UHF TV band is limited, secondary spectrum, that was never intended to provide anything more than a safety valve for expanded medical telemetry functions that cannot be accommodated in existing bands. Nothing could make the limitation of such spectrum more clearly evident than recent reports that existing medical telemetry systems operating on VHF TV channels have suffered interference and are being forced to try to relocate by the introduction of DTV on these frequencies. See, e.g., "FDA Public Health Advisory: Interference Between Digital TV Transmissions and Medical Telemetry Systems" (March 20, 1998); "Joint Statement of the FCC and the FDA Regarding Avoidance of Interference Between Digital Television and Medical Telemetry Devices" (March 25, 1998).

What is clear from these developments is that, far from being given room for expansion, existing medical telemetry operations are being squeezed by the introduction of new high powered use of the frequencies in which they operate. These developments should put all on notice that concerns raised about interference to medical telemetry are not just theoretical; rather, there are real public health and welfare consequences. Further, while in the case of television channels, there are limited and defined uses that may allow the opportunity for continued medical telemetry use on vacant TV channels, were LMCC's "Consensus Plan" put into place

and virtually the whole 450-470 MHz band made available for high power land mobile operations, medical telemetry systems in hundreds of hospitals serving tens of thousands of critical care cardiac patients could be jeopardized, with devastating consequences.

It is, moreover, wrong to suggest that there are not other existing and newly available frequencies being opened up for new paging and the other land mobile communications. By way of example only, SMR frequencies above 800 MHz have recently been auctioned and non-SMR frequencies remain available for licensing in many markets; upcoming 220-222 MHz auctions offer another pending opportunity for this kind of service, as do new flexible use rules being developed for other bands that will permit paging and other land mobile operations to be conducted. This is all on top of existing SMR, new PCS, expanded digital cellular, and other services including in other parts of the bands subject to refarming that are all capable of providing one-way and two-way communications services, but are of no use for medical telemetry.

ITA Observation 7: The FCC left it in the hands of the frequency coordinators to decide the fate of medical telemetry in the band.

Response: Wrong as a matter of record, law and policy.

The FCC asked the industry to try to develop a consensus plan for addressing the situation of low power in the 450-470 MHz band. But it never gave the coordinators the power simply to determine that medical telemetry is not worthy of protection and then to declare a "consensus" among themselves based upon this underlying premise.

An Observation of Our Own: The role of the coordinators should be to try to analyze the requirements of existing and prospective users of the band to preserve existing operations, allow expansion of services where possible, and overall to make more efficient use of the band. It should not be to pick winners and losers or determine what use is more worthy of protection. Unfortunately, it is the latter role that the coordinators have followed in this process.

Indeed, not once over the last five years or more that this proceeding has been percolating has there ever been serious effort on the part of the coordinators: to analyze the frequency requirements of medical telemetry systems; to assess the problems of co- and adjacent channel interference to these systems; to try to come up with possible ways to use the consolidation of services in the band to increase (or even maintain) necessary frequencies for low and very low power operations; to try to develop ways in which, as systems are necessarily converted to new equipment, over time, a very low power zone in the band can be created, which all concerned recognize as the most efficient solution to the problem; or really to view the problem

and challenge as one to preserve and expand all existing uses of the band, including medical telemetry. Rather, the coordinators have always proceeded under the assumption that medical telemetry can be sacrificed and that is what they have proposed.

HP and SpaceLabs respectfully submit that, if progress is ever to be made in negotiating a solution with the coordinators to the very difficult problems presented, the underlying assumption of the coordinators that medical telemetry operations in the band are not worthy of protection has to be changed.

Respectfully submitted,

HEWLETT-PACKARD COMPANY

By: _____

Henry Goldberg
Jonathan L. Wiener
GOLDBERG, GODLES, WIENER & WRIGHT
1229 Nineteenth Street, N.W.
Washington, DC 20036
(202) 429-4900

Its Attorneys

SPACELABS MEDICAL, INC.

By: _____

Jeffrey H. Olson
Diane C. Gaylor
PAUL WEISS RIFKIND WHARTON & GARRISON
1615 L Street, NW, Suite 1300
Washington, DC 20036
(202) 223-7326

Its Attorneys

Of Counsel:

Jonathan L. Weil, Esq.
Senior Attorney
Hewlett-Packard Company
300 Minuteman Road
Andover, MA 01810
(508) 687-1501

cc: See attached certificate of service.

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Letter were sent by hand and first-class mail, postage prepaid, this 15th day of April, 1998, to each of the following:

* Chairman William Kennard
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

* Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W.
8th floor
Washington, D.C. 20554

* Commissioner Harold Furchtgott-Roth
Federal Communications Commission
1919 M Street, N.W.
8th floor
Washington, D.C. 20554

* Commissioner Michael K. Powell
Federal Communications Commission
1919 M Street, N.W.
8th floor
Washington, D.C. 20544

* Commissioner Gloria Tristani
Federal Communications Commission
1919 M Street, N.W.
8th floor
Washington, D.C. 20554

* D'Wana Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 8010
Washington, DC 20554

* Rosalind K. Allen, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, DC 20554

* Herbert W. Zeiler, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 8010
Washington, DC 20554

* Ira R. Keltz
Engineer
Wireless Telecommunication Bureau
Federal Communications Commission
2025 M Street, N.W., Room 8010
Washington, DC 20554

Larry Miller, President
Land Mobile Communications Council
c/o AASHTO
Suite 249
444 N. Capitol Street
Washington, DC 20001

Robert B. Kelly
Kelly & Povich, P.C.
1101 30th Street, N.W., Suite 300
Washington, D.C. 20007
Counsel for Securicor Radiocoms Limited

Martin W. Bercovici
Keller and Heckman
1001 G Street, N.W., Suite 500 West
Washington, D.C. 20001
Counsel for International Municipal Signal Association
Counsel for International Association of Fire Chiefs, Inc.

John A. Prendergast
Blooston, Mordkofsky, Jackson & Dickens
2120 L Street, N.W., Suite 300
Washington, D.C. 20037
Counsel for Alarm Industry Communications Committee
Counsel for American Automobile Association

George Petrutsas
Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street, 11th Floor
Rosslyn, Virginia 22209-3801
Counsel for Forest Industries Telecommunications

John L. Barlett
Karen A. Kincaid
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
Counsel for Aeronautical Radio, Inc.

William K. Keane
Winston & Strawn
1400 L Street, N.W.
Washington, D.C. 20005
Counsel for Manufacturers Radio Frequency
Advisory Committee, Inc.

Kenneth Siegel
Deputy General Counsel
2200 Mill Road
Alexandria, Virginia 22314
Counsel for American Trucking Associations, Inc.

Alan R. Shark
President
American Mobile Telecommunications Association, Inc.
1150 18th Street, N.W., Suite 250
Washington, D.C. 20036

Elizabeth R. Sachs
Lukas, McGowan, Nace & Gutierrez, Chartered
1111 19th Street, N.W. Suite 1200
Washington, D.C. 20036
Counsel for American Mobile Telecommunications Association, Inc.

Lawrence R. Sidman
Verner, Liipfert, Bernhard, McPherson
and Hand, Chartered
901 - 15th Street, N.W., Suite 700
Washington, D.C. 20005-2301
Counsel for the Association of American Railroads

Wayne V. Black
Joseph M. Sandri, Jr.
Keller and Heckman
1001 G Street, N.W., Suite 500 West
Washington, D.C. 20001
Counsel for The American Petroleum Institute

Frederick C. Ohly
Associate General Counsel
National Railroad Passenger Corporation
60 Massachusetts Avenue, N.E.
Washington, D.C. 20002

Samuel E. Baum, P.E.
Division Engineer
New York City Transit Authority
Department of Capital Program Management
1350 Avenue of the Americas
New York, New York 10019

Jay C. Keithley
Nancy R. McCabe
1850 M Street, N.W.
Washington, D.C. 20036
Counsel for The United and Central Telephone Companies

Harold L. Hadland
Senior Staff Attorney
Nebraska Public Power District
P.O. Box 499
Columbus, Nebraska 68601

William Malone
Miller, Canfield, Paddock and Stone
1225 19th Street, N.W., Suite 400
Washington, D.C. 20036-2420
Counsel for Nebraska Public Power District

David J. Hensing
Deputy Executive Director
American Association of State Highway
and Transportation Officials
444 North Capitol Street, N.W., Suite 249
Washington, D.C. 20001

Edwin F. Kemp
General Director
Telecommunications Wireless Systems Engineering
Union Pacific Railroad Company
Missouri Pacific Railroad Company
1416 Dodge Street, Room 230
Omaha, Nebraska 68179-0230

Norfolk Southern Corporation
Lake Division
8111 Nelson Road
Fort Wayne, Indiana 46803

Raymond A. Kowalski
Keller and Heckman
1001 G Street, N.W., Suite 500 West
Washington, D.C. 20554
Counsel for The American Trucking Association

Stuart Overby
Michael A. Lewis
Motorola, Inc.
1350 I Street, N.W.
Washington, D.C. 20005

David C. Jatlow
Young & Jatlow
2300 N Street, N.W., Suite 600
Washington, D.C. 20037
Counsel for The Fricsson Corporation

Paul G. Lorenzini
Senior Vice President
PacifiCorp
920 S.W. Sixth Avenue
Portland, Oregon 97204

Joseph P. Markoski
Brian J. McHugh
Squire, Sanders & Dempsey
1201 Pennsylvania Avenue, N.W.
P.O. Box 407
Washington, D.C. 20044
Counsel for The Boeing Company

Robert M. Gurss
Wilkes, Artis, Hedrick & Lane, Chartered
1666 K Street, N.W., Suite 1100
Washington, D.C. 20006-2897
Counsel for APCO

Mark J. Golden
Senior Vice President, Industry Affairs
Personal Communications
Industry Association
500 Montgomery Street, Suite 700
Alexandria, Virginia 22314-1561

Mark E. Crosby
President and CEO
Industrial Telecommunications
Association, Inc.
1110 N. Glebe Road, Suite 500
Arlington, Virginia 22201

Jeffery L. Sheldon
Sean A. Stokes
Thomas E. Goode
UTC, The Telecommunications Association
1140 Connecticut Avenue, N.W., Suite 1140
Washington, D.C. 20036

Jack R. Gilstrap
Executive Vice President
APTA
1201 New York Avenue, N.W.
Washington, D.C. 20005

John Brockett
CSX Technology
4655 Salisbury Road, Suite 205
Jacksonville, Florida 32256

David Galentine
Manager, Wireless
Weyerhaeuser Company
Mail Stop PB-1N1
Takoma, Washington 98477

J. Nicholas Counter III
President
Alliance of Motion Picture
and Television Producers
15503 Ventura Boulevard
Encino, California 91436-3140

John W. Iobst, Ph.D.
Technology Department Newspaper
Association of America
The Newspaper Center
Sunrise Valley Drive
Reston, Virginia 22091-1412

/s/ Hema Patel
Hema Patel

* By Hand